

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

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U.S. DISTRICT COURT

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(1) Marcus Bradford Hays

Plaintiff

v.

(1) Union Pacific Railroad

Defendant

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Civil Action No.

Jury Demanded

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BY

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PLAINTIFF'S ORIGINAL COMPLAINT

A. Parties

1. Plaintiff Marcus Bradford Hays, is an individual that is a citizen of the State of Texas.

2. Union Pacific Railroad may be served through its registered agent, David Young, General Solicitor, Law Department, 808 Travis, Suite 620, Houston, Texas 77002.

B. Jurisdiction

3. Jurisdiction over Defendant in this case arises pursuant to 28 U.S.C. § 1331, in that this action arises under the Constitution laws, or treaties of the United States, specifically the Federal Employers' Liability Act, Title 45 U.S.C. § 51, et seq.

C. Venue

4. Venue is proper in this matter pursuant to the terms of Title 28 U.S.C. § 1391 (b) and (c) in that the Defendant resides in the Eastern District of Texas and has regular and systematic contacts with this District.

D. Conditions Precedent

5. All conditions precedent have been performed or have occurred.

E. Facts

6. On December 10, 2003, Plaintiff suffered injuries to his leg and wrist and back when he fell into a man hole which was covered in snow but the cover was missing or dislodged due to the negligence of Union Pacific Railroad Co., while picking up a truck for maintenance of way.

7. At the time of the accident, Defendant was engaged in business as a common carrier in interstate commerce, and Plaintiff was acting within the course and scope of his employment. Plaintiff was employed by Defendant as a truck driver, and all or part of his duties involved the furtherance of interstate commerce.

F. Count 1 - Federal Employers' Liability Act

8. Defendant owed Plaintiff a duty to provide a safe working environment, more specifically, not allow the unsafe covering of a man hole adjacent to the truck he was instructed to pick up. Defendant breached its duty when it instructed to find the keys to the truck and drive it away when the area was covered in ice and snow and the manhole was open under the snow, creating a "bear trap". The hole was deep and Plaintiff caught himself at his armpits to avoid falling.

G. Damages

9. As a direct and proximate result of Defendant's negligence, Plaintiff suffered the following injuries and damages:

- a. Physical pain and mental anguish in the past and future.
- b. Lost earnings.
- c. Damage to earning capacity.
- d. Disfigurement in the past and future.
- e. Physical impairment in the past and future.
- f. Medical expenses in the past and future.
- g. Pain and suffering.
- h. Loss of consortium.

H. Request for Jury Trial

10. Plaintiff asserts her rights under the Seventh Amendment to the U.S. Constitution and demands, in accordance with Federal Rule of Civil Procedure 38, a trial by jury on all issues.

I. Prayer

11. For these reasons, Plaintiff asks for judgment against Defendant for the following:

- a. Actual damages to be set by the triers of the fact but in no event over \$10,000,000.
- b. Postjudgment interest.
- c. Costs of suit.
- d. All other relief the court deems appropriate.

Respectfully submitted,



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